

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PETER LAKE and TIMOTHY CREED,
Individually, and on behalf of All Others
Similarly Situated,

Plaintiff,

- against-

**ORDER Adopting
Report & Recommendation**
18-cv-2009 (SJF)(AYS)

FORD MOTOR COMPANY,

Defendant.

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FEUERSTEIN, District Judge:

I. Introduction

Before the Court is a Report and Recommendation (“the Report”) of the Honorable Anne Y. Shields, United States Magistrate, dated August 22, 2019 (*see* ECF No. 38), recommending that Defendant’s motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (hereafter, the “Dismissal Motion”; *see* ECF No. 26) be granted, and its motion to strike the class allegations in Plaintiffs’ Amended Complaint (hereafter, the “Strike Motion”; *see* ECF No. 32) be dismissed as moot. The Report further advised the parties, *inter alia*, (1) that “[a]ny written objections to th[e] Report . . . must be filed with the Clerk of the Court within fourteen (14) days of filing of this [R]eport,” and (2) that a “[f]ailure to file objections within fourteen (14) days will preclude further review of this [R]eport . . . either by the District Court or Court of Appeals.” (Report at 15) (citing *Thomas v. Arn*, 474 U.S. 140, 145 (1985); *Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008)). Although a copy of the Report was served upon counsel for all parties via the Court’s Electronic Case Filing system on the date it was issued, *i.e.*, August 22, 2019 (*see* Notice of Electronic Filing associated with ECF No. 38

(i.e., the Report)), no objections have been filed, nor has any party sought an extension to do so. (See Case Docket, *in toto*.) For the reasons set forth below, Magistrate Judge Shileds' Report is adopted in its entirety.

II. Discussion

A. *Standard of Review*

Any party may serve and file written objections to a report and recommendation of a magistrate judge within fourteen (14) days after being served with a copy thereof. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). Any portion of such a report and recommendation to which a timely objection has been made is reviewed *de novo*. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). However, the Court is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. See *Thomas*, 474 U.S. at 150. Indeed, “[w]here parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)).

Nonetheless, the waiver rule is “nonjurisdictional” and, thus, the Court may excuse a violation thereof “in the interests of justice.” *King v. City of N.Y., Dep’t of Corr.*, 419 F. App’x 25, 27 (2d Cir. 2011) (summary order) (quoting *Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993)); see also *DeLeon v. Strack*, 234 F.3d 84, 86 (2d Cir. 2000). “Such discretion is exercised based on, among other factors, whether the defaulted argument has substantial merit or, put otherwise, whether the magistrate judge committed plain error in ruling against the defaulting

party.” *Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000); *accord King*, 419 F. App’x at 27.

To accept the magistrate judge’s report and recommendation absent a timely objection, the court need only be satisfied that there is no clear error on the face of the record. *See* Fed. R. Civ. P. 72(b); *Baptichon v. Nevada State Bank*, 304 F. Supp.2d 451, 453 (E.D.N.Y. 2004), *aff’d*, 125 F. App’x 374 (2d Cir. 2005). Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge’s findings or recommendations. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

B. Review of the Report

No party has filed objections to the Report within the time prescribed in 28 U.S.C. § 636(b)(1)(C), nor has any party sought an extension of the objection deadline. As the parties were provided with adequate notice of the Report and an express warning of the consequences of a failing to timely file objections thereto, their failure to interpose timely objections to the Report operates as a waiver of further judicial review. *See Caidor*, 517 F.3d at 602-03; *Mario*, 313 F.3d at 766. Thus, this Court is not obligated to conduct a *de novo* review of the findings and conclusions in the Report, but rather “need only satisfy itself that there is no clear error on the face of the record to accept a magistrate judge’s report and recommendation.” *Safety-Kleen Sys., Inc. v. Silogram Lubricants Corp.*, No. 12-cv-4849, 2013 WL 6795963, at *1 (E.D.N.Y. Dec. 23, 2013). After a careful review of the Report, the Court finds no plain error in either the reasoning or the conclusions reached therein, and accordingly, adopts it in its entirety.

III. Conclusion

Accordingly, having adopted the Report in its entirety, IT IS HEREBY ORDERED:

- A. The Dismissal Motion is GRANTED;
- B. The Strike Motion is DISMISSED as moot; and
- C. The Clerk of Court is directed to close this case.

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The October 3, 2019 Status Conference is marked off the Court's calendar.

SO ORDERED this 23rd day of September 2019 at Central Islip, New York.

/s/ *Sandra J. Feuerstein*

Sandra J. Feuerstein
United States District Judge